

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 14820 of 1998(L)

PETITIONER:

P.KARTHIAYANI,
W/O.KANNAN, AGED 51 YEARS,
RESIDING AT SOURABHYA,
KOLARATT STREET, (P.O.) CHOMBALA,
KOZHIKODE DISTRICT.

BY ADV. SRI.C.VATHSALAN
SRI.P.M.SAJI
SMT.THUSHARA.V

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY
THE SECRETARY, DEPARTMENT OF
GENERAL EDUCATION,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.
4. THE DISTRICT EDUCATIONAL OFFICER,
BADAGARA DISTRICT, (P.O) BADAGARA,
KOZHIKODE DISTRICT.
5. THE ASSISTANT EDUCATIONAL OFFICER,
VADAKARA, (P.O.) VADAKARA.
6. THE MANAGER,
KARUVANCHERY U.P.SCHOOL,
(P.O.) PALAYAD NADA, (VIA) IRINGAL.
7. THE HEADMASTER,
KARUVANCHERY U.P.SCHOOL,
(P.O) PALAYAD NADA, (VIA) IRINGAL.

BY ADV. SRI.M.K.ABOOBACKER (FOR R6)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.26220/1998 IN OP NO.14820/1998

DISMISSED

19.11.2007

SD/-
S.SIRI JAGAN,
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

- EXT. P1: COPY OF THE ORDER NO.G.O.RT.1974/85/CE DATED 20.5.1985.
- EXT. P2: COPY OF THE PROCEEDINGS NO.17463/86(1) DATED 30.11.1986.
- EXT. P3: COPY OF THE APPOINTMENT ORDER DATED 15.7.1985 BY THE 6TH RESPONDENT.
- EXT. P4: COPY OF THE LETTER DATED 25.9.1996 BY THE 5TH RESPONDENT.
- EXT. P5: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.
- EXT. P6: COPY OF THE LETTER DATED 17.1.1997 BY THE RESPONDENT.
- EXT. P7: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT. P8: COPY OF THE ORDER DATED 21.1.1998 BY THE 1ST RESPONDENT, NO.G.O.(RT) NO.282/98/G.EDN.
- EXT. P9: COPY OF THE ORDER NO.G.O.(RT) NO.2544/91/CE DATED 21.8.1991.
- EXT. P10: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT. P11: COPY OF THE LETTER DATED 10.2.1998 BY THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P.(C) No. 14820 of 1998 (L)

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Dated this the 19th day of November, 2007

JUDGMENT

The petitioner in this original petition is working as a full time Craft Teacher (Needle Teacher) in the Karuvanchery U.P.School of the 5th respondent from 1985 onwards. At the time of filing of the original petition in 1998, the petitioner was 51 years old. Therefore she must have retired from service by now. The petitioner was originally appointed as part time Craft Teacher in 1981 and continued to be so till 1985. The post was converted as full time post (needle work) in 1985 by Ext.P1 order. Some objections were raised against the same which was also dropped by P2 order. By Ext.P3 order, the petitioner was appointed as Full Time Craft Teacher from 15.7.1985. While the petitioner was continuing as such the 5th respondent AEO by letter dated 25.9.1996 informed the Manager that the appointment of the petitioner as full time Craft Teacher from 15.7.85 was illegal, in view of some audit objections and Ext.P4

order was passed directing the Headmaster of the School to take steps to refund the excess salary received by the petitioner. The petitioner's representation in this regard was rejected by Ext.P6 order. By Ext.P8 order, the Government also confirmed the same. The petitioner is challenging Exts. P4, P6 and P8 orders in this original petition.

2. The learned Government Pleader submits that in view of Rule 6(B) of Chapter XXXIII of KER in the 6th respondent's School, no full time post of Craft Teacher is permissible and as such there is no merit in the original petition.

3. I have considered the rival contentions in detail. Whatever be the legal position, it is not disputed before me that Exts. P1, P2 and P3 orders which are orders passed under the Kerala Education Rules have not been set aside by a competent authority as provided in the Rules till date. The staff fixation order has also not been interfered with by any authority as prescribed under the Kerala Educational Rules. Without setting aside those orders the petitioner cannot be directed to refund the excess pay regularly received by her even her appointment is

against Rule 6(B) of Chapter XXXIII of KER. The petitioner has already retired from service. There is no fault on the part of the petitioner in the matter. As such, it would be totally unjust to direct the petitioner to refund part of the salary received by the petitioner, that too for work actually done by the petitioner. In that view Exts. P4, P6 and P8 are liable to be quashed. I do so.

The original petition is disposed of as above.

**S.SIRI JAGAN,
JUDGE**

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